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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 276

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, AND CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, ... *Petitioners*

v.

UNITED STATES OF AMERICA ..... *Respondent*

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the District Court is unreported (R. 18,25). The opinion of the Court of Appeals is reported in 244 F.(2) 27 (R.26-35).

JURISDICTION

The judgment of the Court of Appeals was entered on May 3, 1957 (R.36,37). The order of the Court of Appeals denying petition for rehearing was entered on June 17, 1957 (R.37). An order staying the issuance of mandates was entered by the Court of Appeals on June 17, 1957 (R.38). An order allowing certiorari was en-

tered by this Court on October 14, 1957 (R.38), 2 L. Ed. (2) 21. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

STATUTES INVOLVED

1. Sections 3490 and 5438 of the Revised Statutes (now combined as 31 U. S. C. 231) read in part as follows:

> *Section* 3490—"Any person . . . who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "Crimes", shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."
>
> *Section* 5438—"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim; makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement or entry . . . shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars."

2. Section 714 of Title 15 U. S. C. (62 Stat. 1070) reads:

> "For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate sup-

plies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as 'agricultural commodities'), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the 'Corporation'), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general direction and control of its Board of Directors."

3. Section 80 of Title 18 (35 Stat. 1095) provides:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; . . ."

4. Section 287 of Title 18 (62 Stat. 698) reads:

"Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

5. Section 1001 of Title 18 (62 Stat. 749) provides:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent

statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

6. Section 6 of Title 18 (62 Stat. 685) states:

"As used in this title:

. . . . .

"The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense."

QUESTION PRESENTED

1. Whether Commodity Credit Corporation is the Government of the United States or a department or officer thereof and therefore authorized to sue under the provisions of Section 231, Title 31 U.S.C.

STATEMENT

The United States brought two separate actions under the False Claims Act, Section 3490 and Section 5438 of the Revised Statutes (31 U.S.C. 231-233) against R. S. Rainwater, Sr., et al and the Citizens National Bank of Walnut Ridge, Arkansas, to recover an unspecified amount of money on account of alleged false claims filed by those parties with the Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, in connection with the 1949 cotton loan program of Commodity Credit Corporation.

The complaints in both of the cases state that the Petitioners caused certain Cotton Producers notes to be transmitted to and paid by Commodity Credit Corporation

when the notes were not eligible under the 1949 cotton loan program, but no loss or damage to Commodity Credit Corporation is claimed (R.1-6, 18-23).

The Petitioners in each action filed motions to dismiss, and on May 8, 1956, the United States District Court for the Eastern District of Arkansas sustained the motions. An appeal was then taken to the Court of Appeals for the Eighth Circuit, which declined to follow *United States* v. *McNinch*, (C.C.A. 4), 242 F(2) 359, and reversed the District Court, ruling that the presentation of alleged false claims to Commodity Credit Corporation was a presentation of such claims against the Government of the United States or department (Department of Agriculture) or officer thereof (R.26-39). Certiorari was granted by this Court, 2 L. Ed. (2) 21.

SUMMARY OF ARGUMENT

Title 31 U.S.C., Section 231, upon which the complaints are grounded, provides for the recovery by the Government of damages and penalties for the presentation of false claims "upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent". The alleged false claims which form the basis for the instant case were presented to the Commodity Credit Corporation, "an agency and instrumentality of the United States with the Department of Agriculture" (R.2,19).

It is the contention of Petitioners that Commodity Credit Corporation is not the Government of the United States or a department or officer thereof, and consequently a suit by it under Section 231, Title 31 U.S.C. is not maintainable. This Court has many times recognized the separate entity from the United States of a corporation whose stock is owned entirely by the Govern-

ment. Further, when Congress provided by R. S. 3490 for suits based upon acts denounced by R. S. 5438, the last mentioned section did not include false claims presented to "any corporation in which the United States of America is a stockholder", and it was not until March 4, 1909 (the date of enactment of Section 80, Title 18 U.S.C. which has now become Sections 287 and 1001, Title U.S.C.) that such addition was made to R. S. 5438. The addition, of course, did not affect R. S. 3490 and, therefore, its scope is limited to false claims presented to the Government or a department of the Government. Commodity Credit Corporation is neither.

ARGUMENT

I

Section 231, Title 31 U.S.C. Does Not Encompass False Claims Presented to Commodity Credit Corporation

The sole and only allegation of the complaints whereby an attempt is made to come within the scope of Section 231, Title 31, U.S.C., is that the Commodity Credit Corporation, an agency and instrumentality of the United States (not the Government) accepted from the Petitioners fourteen transmittal letters on which were listed ninety-eight notes securing one hundred and thirty-five purportedly ineligible bales of cotton and paid the Petitioners the amount of the notes and interest, when if Commodity Credit Corporation (not the Government) had known the allegedly true facts it would have refused to accept the notes or pay anything to the Petitioners on account thereof.

The pertinent part of Section 231, *supra*, reads:

> "Any person . . . who shall make or cause to be made, or present or cause to be presented, for payment and approval, to or by any person or officer in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent. . . ."

The section, a part of which is quoted above, originated by *Act of March* 2, 1863, 12 Stat. 696, which provided for both criminal penalties and civil recovery for the commission of certain acts. The civil liability portion of the Act was subsequently codified as Section 3490 of the *Revised Statutes*, and the criminal portion was codified as Section 5438. Section 3490 provided for forfeitures and double damages if the acts prohibited by

R. S. 5438 should be committed. Section 5438 denounced the presentation of false claims against the "Government of the United States or any department or officer thereof". In 1909, R. S. 5438 was repealed (35 Stat. 1153), and superseded by Section 35 of *the Criminal Code* (Section 80, Title 18) which with various amendments is now divided into Sections 287 and 1001, Title 18.

The incorporation by reference in R. S. 3490 of acts prohibited by R. S. 5438 was entirely proper but subsequent changes in R. S. 5438 did not become a part of R. S. 3490. In the very early case of *Kendall* v. *United States*, 12 Pet. 524, 9 L. Ed. 1181, Mr. Justice Thompson pointed out that it is permissible and not an uncommon practice for a legislative body to adopt by reference other legislative acts, but "such adoption has always been considered as referring to the law existing at the time of adoption; and no subsequent legislation has ever been supposed to affect it. And such must necessarily be the effect and operation of such adoption. No other rule would furnish any certainty as to what was the law, and would be adopting prospectively all changes that might be made in the law." This statement was referred to with approval by this Court in the case of *In re Heath*, 144 U.S. 92, 36 L. Ed. 358. We quote:

> "And the adoption in a local law of the provisions of a general law does not carry with it the adoption of changes afterwards made in the general law."

In treating with the question the Court of Appeals for the Second Circuit in *United State ex rel Kessler* v. *Mercur Corp.*, 83 F(2) 178, cer. den. 299 U. S. 576, 81 L. Ed. 424, stated:

> "While Section 5438 was amended, repealed, and finally since the time it was referred to in Section 3490 superseded by a broader enactment

(18 U.S.C.A. 80), it stands, so far as Section 3490 is concerned, as it was written when incorporated by reference."

Now, then, Congress in repealing R. S. 5438, realized that the presentation of a false claim against the "Government of the United States or any department or officer thereof" did not cover the presentation of a false claim to a corporation in which the United States was a stockholder because Section 35 of the *Criminal Code* (Section 80, Title 18 U.S.C.), which replaced R. S. 5438, was a "broader enactment" (*United States ex rel Kessler* v. *Mercur Corp., supra*), and such enactment expressly provided against the presentation to any "person or officer in the civil, military or naval service of the United States, or any department thereof, *or any corporation in which the United States of America is a stockholder* any claim upon or against the Government of the United States, or any department or officer thereof, *or any corporation in which the United States of America is a stockholder*, knowing such claim to be false, fictitious or fraudulent". When Section 35 of the *Criminal Code* was superseded by Sections 287 and 1001 of Title 18 U.S.C., the words "or any corporation in which the United States of America is a stockholder" were omitted as unnecessary in view of Section 6, Title 18 U.S.C., which defines "agency" as including any corporation in which the United States has a proprietary interest. It is readily seen, therefore, that Congress expanded the provisions contained in R. S. 5438 when enacting Section 35 of the *Criminal Code* and Sections 287 and 1001, Title 18. We first quote from Section 287 as follows:

> "Whoever makes or presents to any person or officer in the civil, military or naval service of the United States, or to any department *or agency thereof*, any claim upon or against the United

States, or any department *or agency thereof.* ..." (Italics supplied.)

And Section 1001, Title 18, reads in part:

"Whoever, *in any matter within the jurisdiction of any* department *or agency of* the United States knowingly or wilfully ..." (Italics supplied.)

It is noted of course that R. S. 5438 contained no reference to the presentation of a false claim to "a corporation in which the United States is a stockholder", or to an "agency of the United States". Congress evidently felt that R. S. 5438 was deficient in not providing against the presentation of false claims to bureaus, agencies, instrumentalities and corporations in which the United States held a proprietary interest and cured such deficiency by the new legislation on the subject to which we have just referred. Nevertheless, it is R. S. 5438 which was incorporated by reference into R. S. 3490 (Section 231, Title 31), and such statute embraces the presentation of false claims only against the "Government of the United States, or any department or officer thereof". It is seen, then, that suits by the United States predicated upon Section 3490 of the Revised Statutes (Section 231 of Title 31) are limited to false claims presented as provided by the explicit and restricted terms of Section 5438 and cannot include false claims presented to Commodity Credit Corporation, whether it be denominated an agency or instrumentality of the United States or a corporation in which the United States is a stockholder.

In *United States* v. *McNinch*, 242 F. (2) 359 (CCA 4), the question presented was identical to the one involved here. That Court held that the Commodity Credit Corporation was not "the government of the United States, or

any department or officer thereof" within the meaning of the False Claims Act. It reasoned that since Section 5438 of the Revised Statutes was amended to include false claims against government corporations, and since that amendment did not affect Section 3490, which was not amended correspondingly, the prohibition of false claims against government corporations was not within the scope of the False Claims Act. We quote from that opinion:

> "The question, then, is narrowed to this: Is a claim against a government corporation, which acts as an agency of the government, a claim against the government of the United States or a department or officer thereof as required by R. S. Sec. 5438 as a condition of liability at the time of the adoption of R. S. Sec. 3490? The answer is manifestly that it is not such a claim. A government corporation, even though acting as an agency of the government is not the government, nor is it a department or officer of the government."

The decision handed down in the instant case by the Court of Appeals for the Eighth Circuit was reviewed in the January, 1958, issue of Columbia Law Review (58 C.L.R. 118). There this comment is found:

> "On the other hand, the decision appears questionable in that it contradicts an established rule of statutory construction. The argument advanced in the *McNinch* case, which the instant court failed to answer, seems legally irrefutable. Where the criminal statute was subsequently amended to extend its prohibitions to false claims against government corporations, it is probable that Congress thought that the scope of the original enactment which incorporated the criminal act b e f o r e its amendment did not include such a prohibition. Thus it seems that before the False Claims Act can properly apply to the CCC, Congress must so provide."

II

Commodity Credit Corporation Is Not the Government of the United States or a Department or an Officer Thereof

We reiterate that Section 231 of Title 31 provides that suit may be brought on account of the presentation of any false claim against "the Government of the United States or any department or officer thereof". Particular notice should be given to the fact that neither of the words "agency or instrumentality" are used. Section 714, Title 15, states:

> ". . . there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the 'Corporation') which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general direction and control of its Board of Directors."

Further, Section 714(b), Title 15, recites that the Corporation (a) shall have succession in its corporate name, (b) may adopt, alter and use a corporate seal, (c) may sue and be sued, (d) may adopt, amend and repeal by-laws, (e) shall have all rights, privileges and immunities of the United States with respect to priority of payments from insolvent, deceased or bankrupt debtors, (f) shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government, (g) may enter into and carry out such contracts or agreements as are necessary in the conduct of its business, (h) may borrow money, (i) shall determine the necessity for its obligations and expenditures, (j) shall have authority to make final and conclusive settlement of any claims by or against the Corporation, (k) may make loans and ad-

vances, and (1) shall possess all incidental powers of corporations generally.

In the very early case of *The Bank of the United States* v. *The Planters' Bank of Georgia*, 9 Wheat. 904. 6 L. Ed. 244, this Court announced the rule, from which it has not departed, as follows:

> "The state does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it."

The rule was reaffirmed in *United States of America* v. *James H. Strang*, 254 U. S. 492, 65 L. Ed. 368. There it was held that the United States Shipping Board Emergency Fleet Corporation was a separate entity from the United States, notwithstanding the ownership by the Government of all of its capital stock. We quote:

> "Notwithstanding all of its stock was owned by the United States, it (the United States Shipping Board Emergency Fleet Corporation) must be regarded as a separate entity."

Of direct significance is the case of *United States ex rel Skinner & Eddy Corporation* v. *J. R. McCarl*, 275 U. S. 1, 72 L. Ed. 131, wherein a petition for a writ of mandamus was brought to compel the Comptroller General to pass upon claims of Skinner & Eddy Corporation against the United States growing out of contracts the corporation had made with the United States Shipping Board Emergency Fleet Corporation. The Fleet Corporation was organized on April 16, 1917, as an instrumentality of the Government, and all of its stock was owned by the United States. In affirming the dismissal of the petition this Court held that the audit and control of the financial transactions of the Fleet Corporation were com-

mitted to its own corporate officers and not the Comptroller General, saying:

> "For the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards. . . ."

In Opinion No. 19, 40 *Opinions Attorney General*, 84, 86, (1941), the Attorney General considered the question whether the rule laid down in the McCarl case, *supra*, that the Fleet Corporation was not accountable to the General Accounting Office, applied to other wholly owned government corporations, and expressed the view that the principles announced in that case were applicable to any corporation owned and operated by the Government, unless the purpose to provide otherwise appeared, either expressly or by implication.

Neither expressly nor by implication can the words "a corporation in which the United States is a stockholder" be read into R. S. 5438. In *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381, 83 L. Ed. 784, this Court stated that federal agencies and instrumentalities do not acquire the Government's immunity from suit merely because they do its work. We quote:

> "Therefore, the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. *United States* v. *Lee*, 106 U. S. 196, 213, 221, 27 L. Ed. 171, 179, 182, 1 S. Ct. 240; *Sloan Shipyards Corp.* v. *United States Shipping Bd. Emergency Fleet Corp.*, 258 U. S. 549, 567, 66 L. Ed. 762, 768, 42 S. Ct. 386, 48 Am. Bankr. Rep. 249. For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them 'as appropriate means of executing the powers of government, as, for instance, . . . a railroad corporation for the pur-

> pose of promoting commerce among the states.' *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529, 38 L. Ed. 808, 810, 14 S. Ct. 891. But this would not confer on any such corporations legal immunity even if the conventional to-sue-and-be-sued clause were omitted."

Keifer & Keifer, supra, was cited with approval in *Reconstruction Finance Corporation* v. *J. G. Menihan Corporation,* 312 U. S. 81, 85 L. Ed. 595. This Court again recognized the separate entity of the corporation from the United States when it spoke through Mr. Chief Justice Hughes as follows:

> "The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. (January 22, 1932) 47 Stat. at L. 5, chap. 8, 15 USCA Sec. 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman* v. *Home Owners' Loan Corp.*, 308 US 21, 32, 33, 84 L. Ed. 11, 16, 17, 60 S. Ct. 15, 124 ALR 1263), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."

It is seen that this Court has repeatedly announced that "a corporation in which the United States is a stockholder" such as the Emergency Fleet Corporation and Reconstruction Finance Corporation is a separate and distinct entity from the Government of the United States. Congress saw fit to create Commodity Credit Corporation as a separate entity so that it could enjoy the special privileges granted. It must also be restricted as a separate entity from the Government of the United States as this Court did the Emergency Fleet Corporation and the Re-

construction Finance Corporation. Many times the various Courts of Appeals have followed the mandate of this Court on this question and certiorari has been denied, thus reinforcing the position of Petitioners. There are also numerous decisions of District Courts to the same effect, but we will only refer to those in the former classification. One of the earliest of such cases is that of *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation*, 294 F. 641 (CCA 2), cer. den. 264 U. S. 586, 68 L. Ed. 862, wherein the court in holding that the United States Shipping Board Emergency Fleet Corporation constituted a distinct entity from the United States, said:

> "But while the Fleet Corporation may have been created and controlled by the government for its own purpose, it by no means follows that such a corporation is in effect the government, and so not subject to the rules of law governing other corporations. A government, engaging in a particular business through the instrumentality of a corporation, may divest itself *pro hac vice* of its sovereign character, so as to render the corporation liable in the same way that a private corporation is liable."

In the case of *United States* v. *Skinner & Eddy Corporation*, 28 F(2) 373 (CCA 9), modified 35 F.(2) 889, cer. dismissed, 281 U. S. 770, 74 L. Ed. 1176, the Court of Appeals for the Ninth Circuit stated that the United States Shipping Board Emergency Fleet Corporation could sue and be sued; its employees were not subject to provisions of the criminal code as were government agents; and it was an instrumentality of the United States, but it did not possess the attributes of sovereignty because:

> "When the government leaves its sovereignty and enters the sphere of commercialism, through its private corporate instrumentalities, it places itself within the rules of private parties."

The case of *Lindgren* v. *U. S. Shipping Board Merchant Fleet Corporation*, 55 F(2) 117 (CCA 4), cer. den. 286 U. S. 542, 70 L. Ed. 1280, involved a complaint for wrongful death against the U. S. Shipping Board Merchant Fleet Corporation, the stock of which was owned by the United States, and the Court said:

> "Plaintiff contends, however, that this suit and the former suit are virtually against the same defendant because the United States owns the stock of the Fleet Corporation and the Fleet Corporation is an agency of the United States. This position cannot be sustained. The United States is a sovereign power representing in its corporate capacity the people of the country and immune from suit, except as it may give its consent thereto. The Fleet Corporation is a private corporation of the District of Columbia, created under the laws of the United States, with power to sue and be sued in the same manner as other corporations. *Sloan Shipyards Corp.* v. *U. S. Shipping Board Emergency Fleet Corporation*, 258 U. S. 549, 568, 42 S. Ct. 386, 66 L. Ed. 762; *U. S. Shipping Board Merchant Fleet Corporation* v. *Harwood*, 281 U. S. 519, 526, 50 S. Ct. 372, 74 L. Ed. 1011. Although the United States owns its stock, it is a distinct entity just as other corporations are distinct from their stockholders. A suit against it is not a suit against the United States, and a suit against the United States is not a suit against it."

A late decision by the Third Circuit is that of *Reconstruction Finance Corporation* v. *Foust Distilling Co.*, 204 F(2) 343 (CCA 3). The court cited many decisions of this Court as authority for the statement:

> "It has been held that where a government corporation carries on a business, it is an entity separate from the United States."

The latest pronouncement upon the subject by a Court of Appeals, other than the decision by the Eighth Circuit

in the instant case, was in the case of *United States of America* v. *Howard A. McNinch, supra.* In that case the court stated that a claim against a government corporation which acts as an agency of the government manifestly is not a claim against the Government of the United States or a department thereof as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490. The Court further said:

> "The fact that the government corporations here involved were not in existence at the time of the enactment of R. S. 5438 would not be controlling if the language of the section were broad enough to encompass claims against such corporations; but, as we have seen, the language is not broad enough to cover such claims, however liberal an interpretation be placed upon it. And in this connection we are bound to give consideration to the fact that the language of R. S. 3490 was not amended to cover such claims when amendments were made in the language of R. S. 5438 to cover the making of fraudulent claims against government corporations. Not only is this true, but it is true also that, in subsequent legislation passed to protect government corporations against false and fraudulent claims, criminal penalties were specifically provided but no provision was made for civil penalties or forfeitures. See 18 USC 1010 and 1014. If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties.* Such action by Congress would certainly be more logical and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of.
>
> *"In such case, civil penalties would properly have been made recoverable by the corpora-

> tion, not by the United States. The fact that the forfeiture under R. S. 3490 must be recovered in a suit by the United States, and not by the government corporation to which the false claim has been presented, is an additional argument that false claims against such corporation are not comprehended by the statute."

The Eighth Circuit predicated its opinion in the instant case upon *United States ex rel Marcus* v. *Hess,* 317 U. S. 537, 87 L. Ed. 443. No corporation owned by the Government was involved in that case. The false claims were made against and paid from funds of Public Works Administration, which was a part of the Government of the United States. Obviously, therefore, the case came within the purview of R. S. 5438. This Court will not depreciate the holding in *Marcus* by reversing the court below in this case because patently Section 3490 does not include Government corporations. It would have been easy for Congress to have amended R. S. 3490 so as to include corporations owned by the Government if it had intended that redress for false claims presented to such corporation be by action under such statute rather than by a suit at the instance of and in the name of the corporation. The corporation may sue in its own name and if it has a cause of action based upon a fraudulent transaction it does not have to resort to R. S. 3490. It is apparent that before R. S. 3490 can be utilized as a basis for suit by Commodity Credit Corporation, Congress must so provide.

CONCLUSION

We respectfully insist, therefore, that Commodity Credit Corporation is a separate entity from the Government of the United States, and certainly is not a Department of the United States. Since R. S. 3490 is the basis for suits arising from false claims presented only to the Government of the United States or a Department thereof, and since Commodity Credit Corporation is neither, the judgment of the court below should be reversed.

Respectfully submitted,

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